

1982 WL 189526 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1982

***1 Re: Disposition of Confiscated Beer and Wine**

The Honorable Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina

Dear Nick:

You have asked our office for advice concerning disposition of revenue received from the sale of contraband beer and wine, seized pursuant to § 61-9-100, Code of Laws of South Carolina, 1976, as amended. There are several statutory provisions relevant to this determination.

Section 61-9-100 provides that if beer or wine is sold or delivered during restricted hours 'all beer and wine found within the said place of business is hereby declared contraband and shall be seized by any peace officer and handled as contraband liquor.' [Emphasis added]. Apparently, this provision originated in 1956 pursuant to Acts No. 820 § 12 and No. 813 § 15, subsection 21. In 1976, a proviso providing for the posting and forfeiture of a bond as an alternative to the confiscation of the beer, was added. See, Act 187 § 4 of 1967. This self-contained proviso is self-explanatory as to the disposition of the proceeds of the forfeited bond. However, the proviso does not address the disposition of contraband beer, and therefore resort to the language of the original Act noting that beer confiscated under this section is to be handled as contraband liquor is controlling.

Section 61-13-570 is the statutory provision pertaining to the handling and disposition of contraband liquor. This provision originated as part and parcel of 1956 Acts No. 813 and 820, and followed in sequence various sections declaring liquor to be contraband. Similarly, the predecessor provision to § 61-9-100, which declared beer to be contraband, was contained in this sequence. Thus, it would appear that § 61-9-100 incorporates the disposition procedures set forth in § 61-13-570 by declaring that contraband beer is to be 'handled as contraband liquor.' As such, the dispositional scheme for the sale of contraband liquor must be deemed controlling for the sale of contraband beer.

You have suggested that the disposition scheme provided in § 61-13-490 may control the proceeds from the sale of beer confiscated pursuant to § 61-9-100. I must disagree. The disposition scheme presented in § 61-13-490 applies 'except as otherwise provided'. Thus, a fair reading of § 61-13-490, together with § 61-13-570, in a matter that would render both applicable would compel a conclusion that the disposition of the proceeds for the sale of confiscated liquor [and beer] is pursuant to § 61-13-570, however, disposition of the proceeds of the sale of confiscated chattels is controlled by § 61-13-490.

In summary, you are advised that if a bond is posted pursuant to the proviso of § 61-9-100, and that bond is forfeited, the proceeds of the forfeited bond are to be disposed of in accordance with the proviso to § 61-9-100. You are further advised that if beer is seized pursuant to § 61-9-100 and that beer is declared to be contraband, then the beer shall be disposed of in accordance with § 61-13-570, and the proceeds distributed pursuant thereto.

Very truly yours,

***2** Edwin E. Evans
Senior Assistant Attorney General

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